

# UTAM, Inc.

822 Dow Rd. · PO Box 8126 · Bridgewater, New Jersey 08807

May 21, 2007

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, D.C. 20554

Re: *Ex Parte*, WT Docket 04-356, ET Docket 02-353

Dear Ms. Dortch:

UTAM, Inc. ("UTAM") originally submitted the attached comments in the above-referenced docket on December 8, 2004. UTAM has just become aware that an exhibit referenced in the comments was omitted in the original filing, and is refileing the attached copy with the exhibit.

Should any questions arise concerning this *ex parte*, please do not hesitate to contact the undersigned at (908) 526-3636.

Respectfully submitted,

UTAM, Inc.

By: Michael Stima  
Michael Stima, Managing Director

cc: Peter Daranco

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Service Rules for Advanced Wireless Services	)	WT Docket No. 04-356
in the 1915-1920 MHz, 1995-2000 MHz,	)	
2020-2025 MHz and 2175-2180 MHz Bands	)	
	)	
Service Rules for Advanced Wireless Services	)	WT Docket No. 02-353
in the 1.7 GHz and 2.1 GHz Bands	)	

**COMMENTS OF UTAM, INC.**

UTAM, Inc. (“UTAM”) herewith files its comments on the Notice of Proposed Rule Making in the above-captioned proceeding.<sup>1</sup> As discussed below, the UTAM is the FCC-designated frequency coordinator for the 1910-1930 MHz Unlicensed Personal Communications Service (“UPCS”) band. As discussed below, UTAM is filing these comments in response to the proposals in the *Notice* concerning compensation to UTAM for clearing costs attributable to the 1915-1920 MHz band. As discussed below, UTAM believes that a proportionate share of the clearing costs of the UPCS band should be apportioned to new Advanced Wireless Service (“AWS”) licensees based on the number of POPs in their market areas, divided by the number of POPs for all market areas won at the initial auction. UTAM believes that conditioning the AWS licenses on the payment of that amount, to be finalized following the auction, strikes the most equitable balance between bidder awareness of liabilities and timeliness in compensation to UTAM.

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<sup>1</sup> Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353 (rel. Sept. 24, 2004) (“*Notice*”).

As the Commission is aware, UTAM has expended time and financial resources, and acquired significant liabilities, in clearing the 1910-1930 MHz band. UTAM's financial burden in clearing the UPCS band has been underwritten by the manufacturers of UPCS equipment, which fund UTAM through fees charged for the devices they market. As required by FCC regulations, the fees generated are used for clearing both the 1910-1920 MHz "asynchronous" and 1920-1930 MHz "isochronous" bands in equal priority, notwithstanding that only isochronous devices are currently being deployed. Now, on the sunset of incumbent microwave users' rights, the 1910-1920 MHz band has been reallocated to new AWS licensees and, quite properly, the FCC has determined that UTAM should be compensated for its costs in clearing spectrum that will accrue to the benefit of others.

As an initial matter, UTAM agrees with the FCC that new AWS users licensed in the 1915-1920 MHz band should bear 25 percent of UTAM's overall clearing costs. The 5 MHz allocated to AWS represents one-quarter of the former UPCS band, and the new licensees, in aggregate, should bear proportionate financial responsibility. Because UTAM has been required to treat all segments of the UPCS band equally, UTAM believes there is no basis for attempting to subdivide costs by frequency segment. Additionally, attempting to subdivide costs would be administratively difficult and burdensome. For these reasons, UTAM believes AWS licensees collectively should be responsible for 25 percent of the costs shown in Attachment 1. The figures in Attachment 1 are directly from UTAM's audited annual financial statements, and the FCC should adopt those figures for reimbursement purposes.

For similar reasons, UTAM also favors the FCC's proposed approach of apportioning the UTAM reimbursement costs among AWS licensees by POPs. Regardless of the type of market areas ultimately adopted by the agency for licensing, POP figures are well-known and provide an

administratively simple proxy for determining benefit. Again, as a policy matter, UTAM's efforts have been conducted on a nationwide basis, and the costs for national clearing are not inherently related to any other stable criteria. Moreover, the task of attempting to subdivide costs for specific market areas on a link-by-link basis would be time consuming and difficult as a practical matter. Division on a *pro rata* basis by POPs, on the other hand, is fair, simple, and allows prospective bidders to quickly determine the scope of the potential contribution to UTAM that will be required.

As the Commission observes in the *Notice*, the issue of unawarded licenses warrants consideration. Specifically, if reimbursement costs for Market "A" are apportioned based on the percentage of in-market POPs versus national POPs, the failure to award a license for Market "A" will result in UTAM receiving less than the total amount of compensation the Commission has determined it is due. And, because UTAM is losing use of the AWS band segment immediately, no policy basis for withholding reimbursement exists. Instead, UTAM believes the FCC should apportion liability for UTAM's costs by requiring an auction winner to pay an amount equal to UTAM's costs multiplied by the number of POPs in the high bidder's market divided by the total number of POPs in licenses awarded during some short initial defined period. In that manner, UTAM would have greater assurance that its costs would be paid in the near term. At the same time, other AWS licensees will not be prejudiced because, to the extent that licenses in the AWS band are later issued, new licenses could be issued subject to a requirement that the original licensees be compensated some *pro rata* amount.

As a final matter, UTAM believes that some mechanism is necessary to ensure that UTAM is, in fact, paid by the new AWS licensees and does not incur substantial transaction costs in obtaining reimbursement. Because the *pro rata* share of UTAM's costs will not be

known with precision until the FCC determines which licenses will be issued in the relevant timeframe, prepayment does not appear feasible. Instead, UTAM suggests issuing such licenses subject to the condition that “within ten (10) business days the licensee must pay to UTAM, Inc. by wire transfer the amount of \$[]; failure to make such a payment will result in the automatic cancellation of the authorization.”

In sum, UTAM believes the UPCS manufacturers which, through UTAM, have funded the clearing of the 1910-1915 MHz band should be timely compensated by those that do stand to benefit from their efforts. Because UTAM's members are immediately losing any theoretical right to access the band and have not, to this date, been able to benefit from their relocation efforts, the process for compensating UTAM should impose minimal burdens on UTAM and should not leave open the potential for reimbursement to be complicated or delayed for any reason. As a result, UTAM favors an approach that simply and fairly allocates UTAM's overall relocation costs, on a *pro rata* basis by spectrum, and then further subdivides that liability among licensees by POPs.

Respectfully submitted,

UTAM, INC.

By: /s/  
Mike Stima, Managing Director  
UTAM, Inc.  
1170 U.S. Hwy 22  
P.O. Box 8126  
Bridgewater, New Jersey 08807  
Tel: (508) 526-3636

Dated: December 8, 2004

**UTAM, Inc.**

**EXPENSES ASSOCIATED WITH CLEARING THE 1910 - 1930 MHz BAND**  
*FOR THE PERIOD FROM JANUARY 1, 1994 (INCEPTION) THROUGH FEBRUARY 7, 2005*  
*DERIVED FROM REPORT OF INDEPENDENT AUDITOR*

<b>EXPENSE ASSOCIATED WITH CLEARING THE 1910 - 1930 MHz BAND</b>	<b>\$34,410,888</b>
<b>AWS PORTION 25%</b>	<b>\$8,602,722</b>
<b>OPERATING EXPENSES FOR THE PERIOD</b>	<b>\$16,108,540</b>
<b>AWS PORTION 25%</b>	<b>\$4,027,135</b>
<b>TOTAL AWS OBLIGATION</b>	<b>\$12,629,857</b>